

Resolution No.:	18-755
Introduced:	March 21, 2017
Adopted:	March 21, 2017

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION NO. H-118 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Jody S. Kline, Esquire, Attorney for the Applicant, Georgetown Professional Associates, LLLP; OPINION AND RESOLUTION ON APPLICATION; Tax Account Number 07-00423480.

OPINION

Local Map Amendment (LMA) Application No. H-118, was filed with the Office of Zoning and Administrative Hearings (OZAH) on September 28, 2016, by Applicant Georgetown Professional Associates, LLLP (a/k/a “Georgetown Professional Associations, Ltd Ptnshp.” and “Georgetown Professional Associates, a Maryland Limited Partnership of Montgomery County, Maryland”). It requests reclassification from the existing R-60 Residential Zone to the EOFF-0.5, H-35, Employment Office Floating Zone of Parcel A, Block T of the Georgetown Village Subdivision, as described in Plat 12576. The property is located at 6300 Democracy Boulevard, in Bethesda, Maryland, and consists of 1.04 acres of land (45,220 square feet) situated on the south side of Democracy Boulevard, 800 feet west of Old Georgetown Road. The current use on the site is a medical and dental office building, styled to look like townhouses, and it is subject to the *1992 North Bethesda/Garrett Park Master Plan*. The use currently operates under Special Exception S-664, granted March 7, 1979, which allows a medical clinic for up to 18 physicians.

The property is owned by the Applicant, which is, in turn, owned by two other entities – Baier Properties, Inc., a one percent (1%) owner, and Lowell E. Baier, Trustee, of the Lowell E. Baier Revocable Trust, a 99% owner. Both have consented to this rezoning application. Exhibits 18, 33 and 33(a). The Applicant seeks greater flexibility to house offices in addition to medical and dental types in the existing building because the number of individual medical practitioners available to fill small offices has diminished in recent years, leaving long periods of vacancies. Tr. 17-19. The Application would retain the existing building, and would merely change the nature of some of the tenants. The Applicant has committed to binding elements that would limit the use to medical and dental clinics and general offices, and would exclude businesses that regularly use commercial vehicles, such as painters and home improvement contractors. The binding elements would also prohibit vehicular access to Bells Mill Road, which is a residential street. Exhibit 33(f). The proposal is set forth in a Floating Zone Plan (FZP), Exhibit 23(a), which contains an

illustrative diagram and specifications of the proposal, as well as other information regarding the development.

A notice of the hearing (Exhibit 22) was mailed out and posted on OZAH's website on December 12, 2016, establishing a hearing date on January 20, 2017. The Applicant submitted updated plans and other supporting documentation, including modified binding elements, in December of 2016, consistent with suggestions made to the Applicant by the Planning Department. Exhibits 21 – 26 (and subparts).

Technical Staff of the Maryland-National Capital Park and Planning Commission ("Technical Staff") reviewed the substance of the application, and recommended approval in a report dated December 23, 2016 (Exhibit 28(a)). The Montgomery County Planning Board ("Planning Board") considered the applications on January 5, 2017, and the three members present unanimously recommended approval, as set forth in a letter to the Hearing Examiner dated January 10, 2017 (Exhibit 28). There has been no response from the community in this case, either for or against the proposal.

A public hearing was convened, as scheduled, on January 20, 2017, at which time the Applicant presented evidence and called three witnesses in support of the application. There was no opposition testimony. The record was held open after the hearing to give Applicant's counsel the opportunity to file additional materials, as listed in Exhibit 29, by January 30, 2017.

After requesting and receiving an extension to file additional documents (Exhibits 32 and 34), the Applicant filed the additional documents mentioned above on February 1, 2017 (Exhibits 33 and 33(a) – (h)). The record was held open until February 10, 2017, for any additional comments. No further comments were received, and the record closed, as scheduled, on February 10, 2017.

In a Report and Recommendation issued on February 15, 2017, the Hearing Examiner recommended approval of the rezoning application on grounds that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance and will be consistent with the coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i).

To avoid unnecessary detail in this Opinion, the Hearing Examiner's Report and Recommendation, dated February 15, 2017, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The Property, Surrounding Area and Zoning History

Technical Staff describes the subject property as follows (Exhibit 28(a), p. 3):

The [1.04]-acre¹ Property [45,220 square feet] is located on the south side of Democracy Boulevard, approximately 800 feet west of the intersection of Democracy Boulevard and Old Georgetown Road in Bethesda within the R-60 Zone. The Property is a through-lot, bounded by Democracy Boulevard to the north, Bells Mill Road to the south, Davis Public Library to the west, and a residential townhouse community to the east. Walter Johnson High School confronts the Property across Democracy Boulevard.

The Property is improved with the 12,855-square foot Georgetown Professional Medical Clinic, which consists of individual office suites organized into a townhouse configuration, and an associated surface parking lot. A bicycle rack is located in the southeast corner of the parking lot. The south side of the Property, close to Bells Mills Road, contains an open space area with three benches, a picnic table, and trash receptacles. A planting bed with white pine trees separates the parking lot from the townhouse development on the abutting property to the east. Three signs along the Property's frontage on Democracy Boulevard identify the office park as the Democracy Medical Center. Two of the signs are freestanding and the third is a low brick monument sign.

Two driveways from Democracy Boulevard provide access to the Property. The driveways are signed for a one-way circulation pattern with cars entering the Property from the western driveway and exiting the Property from the eastern driveway. A pedestrian connection is available from Bells Mill Road, but vehicular access is only available from Democracy Boulevard.

Consistent with Zoning Ordinance §59.7.2.1.B.2.g.v.(b), Applicant filed an "Existing Conditions Plan" (Exhibit 21(b)), certified by a professional and showing the existing conditions on the site and in the vicinity within 100 feet. As demonstrated by this plan, and accepted by Technical Staff (Exhibit 28(a), p. 10), "There are no forests, wetlands, or other environmental features on the Property." Staff added (Exhibit 28(a), p. 13), "The Property does not contain any stream, floodplain, wetland, environmental buffers, or any slopes greater than 25% or slopes greater than 15% where erodible soils are present." The Plan also indicates that the site is not in a Special Protection or Primary Management area, and has no rare, threatened, or endangered species.

The surrounding area must be identified in a Floating Zone case so that compatibility can be evaluated properly. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. The surrounding area, as defined by Technical Staff (Exhibit 28(a), p. 5), "is generally bound by Sinnott Drive and Winnepeg Road to the south, Old Georgetown Road to the east, Democracy Boulevard to the north, and Mayfield Drive to the west."

¹ The Technical Staff listed the property as 1.03 acres, but as noted by the Planning Board (Exhibit 28), it is actually "1.04 (1.0381) acres," so the District Council has substituted the correctly rounded acreage figure.

The Applicant's civil engineer, Patrick La Vay, testified that he would have defined the surrounding neighborhood a bit more broadly, but the Applicant accepted Staff's definition. Tr. 26-30. The Hearing Examiner agreed with the Applicant that the surrounding neighborhood should have extended to the north and the east to at least include the confronting properties across Democracy Boulevard and that road's intersection with Old Georgetown Road, both of which are in the area that might be most directly affected by the proposed use. The District Council accepts the Hearing Examiner's expanded definition of the surrounding neighborhood, but notes that this distinction will make no difference to the outcome of this case because the broadening of the use to include some professional offices other than medical offices will actually reduce the number of vehicle trips to the site and thus reduce the impact on the expanded area. Tr. 47-48.

Technical Staff described the surrounding area, stating (Exhibit 28(a), p. 5),

The Neighborhood is predominantly residential with detached houses and townhouses in the R-60 Zone. A townhouse development abuts the Property to the east. The east side of the Property abuts the rear yards of five townhouses. Davis Public Library abuts the Property to the west."

The Hearing Examiner noted, in addition, that Walter Johnson High School confronts the Property across Democracy Boulevard, and the Georgetown Square Shopping Center, which abuts the high school, is diagonally across Democracy Boulevard from the subject site.

Technical Staff reports in its zoning history (Exhibit 28(a), p. 6) that the subject site has been in the R-60 Zone for many years, and the 1992 North Bethesda/Garrett Park Master Plan most recently confirmed the site's R-60 zoning. The Board of Appeals granted the Applicant Special Exception S-664 for a medical clinic on the site with up to 18 physicians on March 7, 1979 (Exhibit 8). The special exception included the following conditions (among others):

1. Hours of operation shall be limited to 7:00 a.m. until 7:00 p.m. on weekdays, 7:00 a.m. until 1:00 p.m. on Saturdays, and other hours for emergencies only.
2. Access to Bells Mill Road shall not be permitted.
3. Petitioner shall not operate a pharmacy or laboratory on the premises.

Lowell E. Baier, the Applicant's principal, testified that the Applicant is prepared to forfeit the special exception if the rezoning is granted because it will become unnecessary. Tr. 23. As noted by the Hearing Examiner, general offices and medical clinics are permitted uses in the EOF Zones, per Zoning Ordinance §59.3.1.6., so a special exception would not be needed.

Proposed Development

Local Map Amendment Application H-118 proposes to reclassify the 1.04-acre property located at 6300 Democracy Boulevard, in Bethesda, Maryland, from the existing R-60 Residential Zone to the EOFF-0.5, H-35, Employment Office Floating Zone. This rezoning would allow the Applicant greater flexibility to rent out some non-medical office space in addition to the existing medical and dental office space, a change necessitated by the difficulty in finding individual

medical practitioners to fill small offices in recent years, leaving long periods of vacancies. Tr. 17-19.

Technical Staff described the proposed changes to the use in its report (Exhibit 28(a), p. 6):

The Applicant plans to retain the existing buildings on the Property, which consist of office suites organized into a townhouse configuration. The existing Special Exception restricts use of the office complex to medical practitioners, but the Applicant is requesting the Employment Floating Zone (EOFF-0.5, H-35) to allow other types of businesses to lease office space. The Applicant states that changes in health care delivery and the flux in the health care industry has resulted in fewer medical practitioners seeking individual practice space. Instead, medical practitioners are more likely to associate with large medical practices, or with one of the many “emergency clinic” operations that are being established in the County. As a result of these changes, the Georgetown Professional Medical Clinic has vacancies for the first time since its inception in 1980. The Applicant asserts that the vacancies are not due to the location or condition of the buildings, but rather to the marketplace dynamics for medical office space. For that reason, the Applicant wishes to change the zoning of the Property from residential (R-60, in which the clinic exists by special exception) to the EOFF Zone to allow the flexibility to rent vacant space to other types of office users.

No changes to the buildings are proposed, but Staff worked with the Applicant to make minor improvements to the Property, including the addition of a lead-in sidewalk, parking lot islands, and supplemental landscaping [Exhibit 21(c)]. These improvements will be implemented through site plan approval.

* * *

In order to allow the needed flexibility, while simultaneously protecting the neighborhood against more intrusive office occupants and cut-through traffic, the Applicant worked out the following binding elements in conjunction with Technical Staff:

1. Pursuant to the provisions of Section 59.5.4.3.B (“Land Uses”), the Applicant voluntarily restricts uses to be allowed on the Property to:
 - a. Medical and Dental Clinics; and
 - b. Offices, excluding businesses that regularly use commercial vehicles such as painters and home improvement contractors.
2. Vehicular access to Bells Mill Road is prohibited.

These binding elements are reflected in the final Floating Zone Plan (Exhibit 23(a)), discussed below, and in the Applicant’s Declaration of Covenants (Exhibit 33(f)) to be filed in the County’s land records.

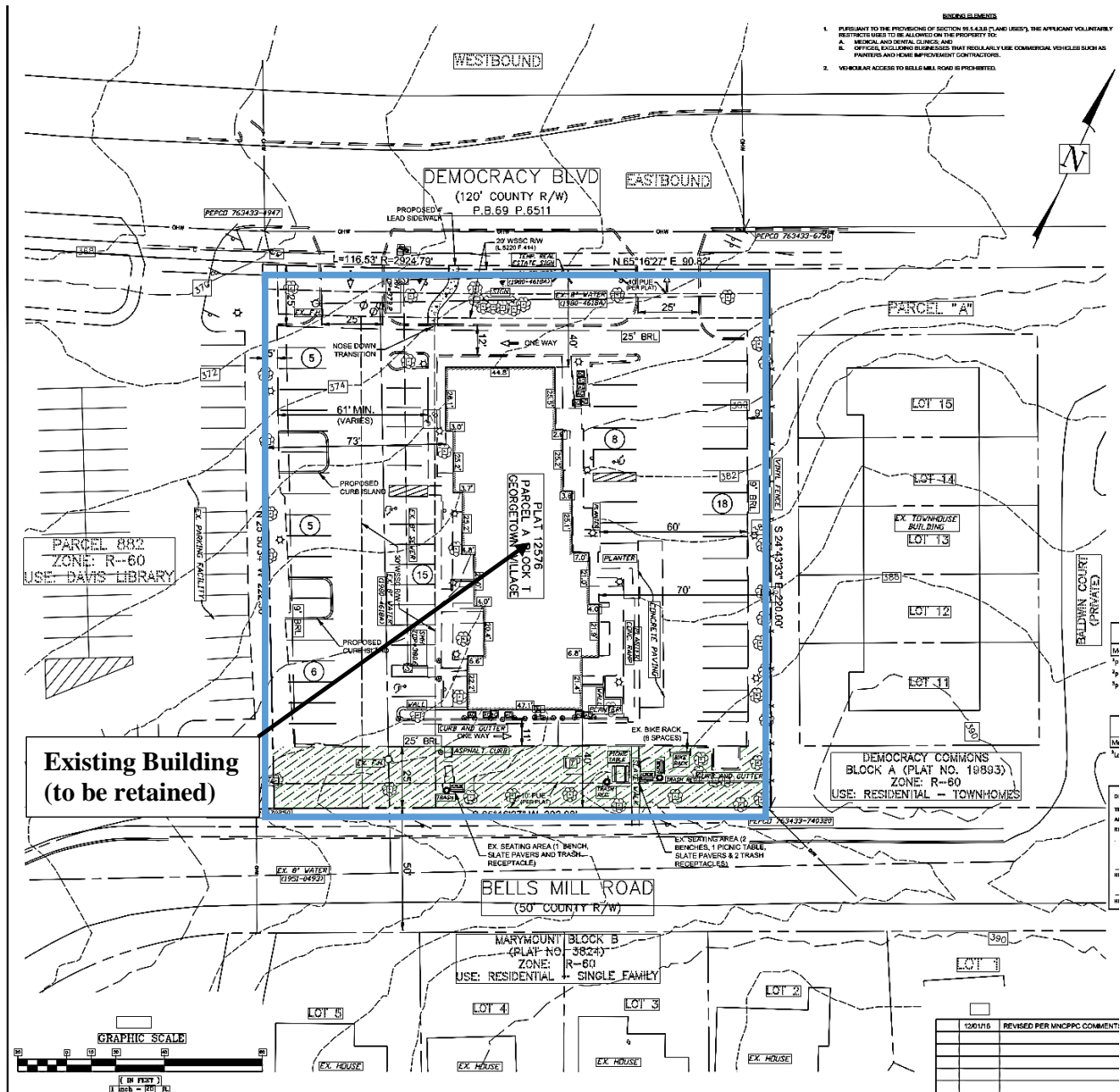
Under Zoning Ordinance §59-7.2.1.B.2.g., an application for rezoning to a Floating Zone must be accompanied by a “Floating Zone Plan” (FZP) that contains the following information:

- i. building location, density, massing, height, and anticipated use;*
- ii. locations of open spaces and preliminary stormwater management strategy;*
- iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;*
- iv. any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and*
- v. the following additional information:*
 - (a) current and proposed zone;*
 - (b) a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened, or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;*
 - (c) existing or approved adjacent land uses, buildings, and rights-of-way;*
 - (d) a Traffic Study under the Planning Board’s LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and*
 - (e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications;*

The Applicant has met these requirements by filing its amended Floating Zone Plan (FZP) in Exhibit 23(a) and related documents (Exhibits 10-12, 14, 15, 21(b) and (c), and 26(a)).

In addition to the FZP, the Applicant filed a Landscape Plan (Exhibit 21(c)) to demonstrate added landscaping that will be finalized by the Planning Department at site plan review. Tr. 10-11. It shows that the Applicant will add six native shade trees and five native ornamental trees along the west and east sides of the subject site to enhance the tree canopy and improve the landscape buffers. Exhibit 28(a), p. 11. Applicant’s civil engineer, Patrick La Vay, testified that there is a permanent monument sign in the center of the property on the north side that faces Democracy Boulevard, and there is a dumpster area in the southeastern corner in an enclosure that will not be changed by this application. Tr. 34. There will also be no change to the physical building itself, but there will be some subtle changes to the parking area. The zoning standards require a certain amount of shading of vehicular parking areas, and so two new islands will be added with shade trees placed in them. As a result, a few parking spaces will be removed, but that is the only proposed change in the parking. There will be 57 parking spaces. Tr. 35-36.

A full copy of the amended Floating Zone Plan (Exhibit 23(a)) is reproduced in the Hearing Examiner's report, and the site layout diagram from the FZP is set forth below:



Conformance with the Master Plan

The subject site is located in the area covered by the 1992 *North Bethesda/Garrett Park Master Plan*. The subject site is mentioned on pages 82-83 of the 1992 *North Bethesda/Garrett Park Master Plan*, in connection with the property directly to its east, which was vacant at the time the Master Plan was approved:

DAVIS-DEMOCRACY

This property [*i.e.*, the property immediately to the east of the subject site] extends to 3.42 acres and is located in the southwest corner of Democracy Boulevard and Old Georgetown Road, immediately north of the Ashburton and Marymount subdivisions. The existing zoning is R-60 and the property is presently vacant.

To the east and north of the [property to the east of the subject] site are the Wildwood and Georgetown Square shopping centers, both zoned C-1 (Convenience Commercial). To the west is located a 2½ story special exception medical office with 12 suites. Bells Mill Road forms the southern boundary of the site. [*Underlining added to note the reference to the subject site.*]

The property [to the east of the subject site] has approximately 700 feet of frontage along Democracy Boulevard and 204 feet of frontage along Old Georgetown Road. The site is partially wooded with some very large specimen oak trees.

Uses considered for this [property immediately to the east of the subject] site included a park, residential townhouse, commercial townhouse, and retail. The location of the property adjacent to a major intersection, the proximity to a single-family subdivision, special exception and retail uses, the shallow depth of the site, and the possibility of additional right-of-way on Democracy Boulevard were all considered. The property [immediately to the east of the subject] site was considered unsuitable for single-family detached homes, while the provision of park facilities and additional retail facilities was considered more appropriate within Rock Spring Park. Accordingly, this Plan confirms the existing R-60 zoning on this property. The property is suitable for development under the R-60 (Cluster) option, with access from Bells Mill Road.

The Master Plan (at pages 33-34) also lists its general objectives, of which its Land Use and Community Facilities objectives are reproduced below:

A. LAND USE

- 1 . Protect and reinforce the integrity of existing residential neighborhoods.
2. Direct future development to land nearest to Metro stops and new transit stations, and to areas best served by transportation infrastructure.
3. Preserve and increase the variety housing stock, including affordable housing.
4. Encourage a mixture of land uses in redeveloping areas to promote variety and vitality.
5. Encourage a land use pattern that provides opportunities for housing and employment.
6. Maintain and enhance the areas regional employment centers.

7. Preserve and enhance a spectrum of retail facilities ranging from regional to neighborhood shopping.
8. Preserve and expand green areas and greenways, including institutional open space, for environmental protection, wildlife sanctuary, recreation and visual relief.

* * *

E. COMMUNITY FACILITIES

1. Provide public facilities to meet the recreational, social and human service needs of the community, particularly the elderly and handicapped.

* * *

The Master Plan expands on its “Green Corridors” policy (at pages 250-251):

8.4 GREEN CORRIDORS

To ensure the identity and integrity of residential areas along major roadways, and to strengthen community identity by creating attractive transportation corridors, the Plan proposes a Green Corridors policy that addresses the visual effects of roadways and abutting properties. The Green Corridors policy is recommended to protect and enhance the residential character of the Planning Area. The policy applies to the following roadways, which differ widely from one another in character:

Old Georgetown Road . . .
Democracy Boulevard . . .

The following is the Green Corridors policy for the North Bethesda-Garrett Park Planning Area.

1. Maintain and enhance planting of vegetation along roadsides and in medians of major highway corridors.

Design guidelines include: placing a landscaped buffer between the curb and relocated sidewalks, placing trees in medians and along curbs, screening of front yard parking, and relocating utility poles to allow for optimum tree planting and sidewalks. Visibility for highway safety must also be considered. Protection and enhancement projects will require coordination between the Maryland State Highway Administration and the Montgomery County Department of Transportation, as well as local property owners and civic associations.

2. The Board of Appeals should require full adherence to the following guidelines for special exceptions in Green Corridors.
 - Require screening for parking, even when less than six parking spaces are involved.

- Retain green space, particularly when it provides trees that screen buildings.
- Screen existing buildings with plant material.
- Additions to existing buildings should be compatible with the existing residential architecture and adjoining neighborhoods. Visibility of buildings to residents of nearby communities should be taken into account. Additions should be as unobtrusive as possible, and should be landscaped to provide screening.

Technical Staff concluded that “. . . the Floating Zone Plan substantially conforms with the recommendations of the *North Bethesda/Garrett Park Master Plan*.” Exhibit 28(a), p. 10. Staff’s rationale is discussed on page 8 of its report:

The Property falls within the boundary of the 1992 *North Bethesda/Garrett Park Master Plan*. At the time of the Master Plan, the Property was already developed with the medical office park. The Master Plan did not recommend any changes and therefore confirmed continued use of the Property for medical offices.

The Master Plan designates Democracy Boulevard as a Green Corridor (pg. 250). The Green Corridors policy addresses the visual effects of roadways and abutting properties to protect and enhance the residential character of the Planning Area. The section of Democracy Boulevard near the Property is lined with a mix of residential, institutional, and commercial uses. The existing townhouse style office park on the Property has a residential appearance that blends well with the neighboring townhouse community to the east. The Property’s planting bed facing Democracy Boulevard contains several mature trees and an attractive planting bed with ornamental trees, shrubs and seasonal flowers. The Property contributes to the existing Green Corridor on this section of Democracy Boulevard.

The Hearing Examiner agreed with Technical Staff’s observations, and expanded on them. Not only does the subject site conform to the Master Plan’s Green Corridors policy for the reasons stated by Staff, it also meets the Plan’s general objectives of protecting the integrity of nearby residential neighborhoods and providing facilities to meet the human services needs of the community by maintaining medical facilities near to residential neighborhoods, and continuing to house them in a residential-appearing, townhouse style building.

Based on this record, the District Council concludes that the proposed rezoning substantially conforms to the applicable recommendations of the *1992 North Bethesda/Garrett Park Master Plan*, and furthers its goals.

Adequacy of Public Facilities

Under the County’s Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)), an assessment must be made at subdivision as to whether the transportation infrastructure, area schools, water and sewage facilities, and other services will be adequate to support a proposed

development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process.²

The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP). While the final test under the APFO is ordinarily carried out at subdivision review, there is no requirement for subdivision in this case because there will be no significant changes to the site. Nevertheless, the District Council must make its own evaluation as to the adequacy of public facilities in a rezoning case, as spelled out for traffic issues in Zoning Ordinance §59.7.2.1.E.2.e, quoted immediately below, and for other public facilities in §59.5.1.2.A.2, which will be discussed at the end of this section.

For a Floating zone application the District Council must find that the floating zone plan will: . . .

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts . . ."

The threshold question is whether to apply the old (2012-2016) Subdivision Staging Policy to evaluate the adequacy of transportation facilities in this case or the new (2016-2020) Subdivision Staging Policy. The Hearing Examiner concluded that in cases like this one, where a rezoning application was filed in 2016 and subdivision would not be needed, the 2012-2016 Subdivision Staging Policy would apply, not the 2016-2020 Subdivision Staging Policy, which by its own terms, applies to applications for subdivision filed on or after January 1, 2017. Moreover, the above-quoted provision of the Zoning Ordinance requires evaluation of traffic under the LATR Guidelines, and as of the close of the record in this case, the Planning Board had not issued LATR Guidelines for the new Subdivision Staging Policy. The Applicant's counsel and Applicant's transportation planner, Shahriar Etemadi, agreed with the Hearing Examiner's approach, and Mr. Etemadi noted that the end result would be the same in any case. Tr. 48-52. The District Council adopts the Hearing Examiner's reasoning, and thus looks to the 2012-2016 Subdivision Staging Policy in evaluating this application.

The principal tool used by the County to evaluate the ability of transportation facilities to handle a proposed development is the Local Area Transportation Review ("LATR"). LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. An LATR traffic study is not required unless a proposed development would generate 30 or more peak-hour automobile trips. For developments that will generate fewer than 30 peak-hour trips, only a traffic statement need be filed.³ Moreover, in cases where a renovation will produce fewer trips than the present use, only a traffic statement is called for. As stated in the Planning Department's *LATR and TPAR Guidelines* (2013), p. 17,

² The Council adopted a new 2016-2020 Subdivision Staging Policy that applies to preliminary plans filed on or after January 1, 2017. See Subdivision Staging Policy 2016-2020, Res. No 18-671, adopted 11-15-16, eff. 1-1-17.

³ Planning Department's *LATR and TPAR Guidelines* (2013), p. 6.

. . . If the proposal generates less than 30 trips or is a renovation of an existing development and will generate no net increase in trips, a traffic exemption statement is required instead of a traffic study.

An LATR traffic study is not required for any expansion that generates five or fewer additional peak hour trips if use and occupancy permits for at least 75 percent of the originally approved development were issued more than 12 years before the LATR traffic study exemption request.

In the subject case, a full traffic study was not required under the LATR Guidelines because the total trips generated by the proposed development will not exceed the current number of trips generated, and will likely be lower because the general office use that is proposed for some of the office units generates fewer trips than medical office use, according to both LATR Guidelines and the Institute of Transportation Engineers (ITE) Trip Generation Manual, 9th Edition. *See* the reports and testimony of Applicant's transportation expert, Shahriar Etemadi (Exhibits 26(a), 33(h) and Tr. 54-60). Technical Staff agreed, as well (Exhibit 28(a), p. 9):

Non-medical office uses that replace existing medical or dental tenants will reduce the number of peak-hour trips to and from the Property because trip-generation rates for general office use are lower than the rates for medical office/clinic use.

Mr. Etemadi predicted the following trip generation (Exhibit 33(h)):⁴

Comparison of Different Office Trip Rates

Land Use (12,855 Square Feet)	AM				PM			
	Trip Rate/1000 Sq.Ft.	In	Out	Total	Trip Rate/1000 Sq.Ft.	In	Out	Total
LATR General Office	1.38	16	2	18	2.24	5	24	29
ITE General Office	1.56	18	2	20	1.49	3	16	19
ITE Medical Office	2.39	24	7	31	3.57	13	33	46

Regardless of whether or not the LATR Guidelines would require a full traffic study, the standard under Zoning Ordinance §59.7.2.1.E.2.e. still requires a finding as to whether the proposed development would “generate traffic that does not exceed the critical lane volume [CLV] or volume/capacity ratio standard. . .” Technical Staff therefore looked at projected CLVs at nearby intersections (Exhibit 28(a), pp. 9-10). The worst-case trip generation scenario would produce the following Critical Lane Volumes (CLVs) at the studied intersections:

- Existing: The current traffic condition with traffic counts collected on October 2015.

⁴ The Medical Office Trip Rate figures were taken from the ITE manual because the LATR Guidelines do not supply trip generation rates for medical offices.

- Background: The existing condition plus the trips generated from approved but un-built nearby developments.
- Total: The background condition plus the additional site-generated trips based on proposed change in land use.

Studied Intersection	Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Democracy Boulevard at Old Georgetown Road	1,277	1,301 ⁵	1,342	1,488	1,342	1,488
Democracy Boulevard at Rockledge Drive	703	645	710	676	710	676

Technical Staff concluded (Exhibit 28(a), p. 9), “The proposal will not create unacceptable intersection congestion levels, as it will not generate traffic that exceeds the North Bethesda Policy Area CLV standard (1,550); therefore, no LATR mitigation is required.”

In addition to LATR, the County employs Transportation Policy Area Review (TPAR) to compensate the public for the cost of transportation improvements necessitated by proposed developments. As to Transportation Policy Area Review (TPAR), Staff stated (Exhibit 28(a), p. 10):

For the Policy Area Review, the Property is located in the North Bethesda Policy Area. Although this policy area has inadequate transit capacity, the Applicant will not be required to make any Transportation Policy Area Review (TPAR) mitigation payment because the application will not increase the square footage of the existing building.

Based on this record, the District Council finds that transportation facilities are adequate and will not be adversely affected by the proposed development.

The new Zoning Ordinance revisits the issue of public facilities in Section 59.5.1.2.A.2., which provides that:

The intent of the Floating zones is to: A. Implement comprehensive planning objectives by: . . . 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; . . . [Emphasis added.]

Thus, the new Zoning Ordinance requires an analysis at rezoning of the adequacy of non-transportation facilities, as well as transportation facilities. Of course, since the proposed use is for office facilities, not residences, it will not generate any demand for additional school facilities. With regard to other listed public facilities and services, the 2012-2016 Subdivision Staging Policy

⁵ The figure of 1,301 is a corrected figure, as Technical Staff agreed with Mr. Etemadi that the original figure in the table on page 9 of the staff report was a typographical error. Exhibit 31.

provides, at p. 21, that we “. . . must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.”⁶ There is no evidence of inadequacy in this case, and therefore police stations, firehouses and health clinics will be considered sufficient.

Applicant’s civil engineer, Patrick La Vay, testified that the existing building on the site is connected to adequate public facilities for water and sewer, power and communications. He further testified that, given the limited land disturbance, there is no requirement to upgrade stormwater management on the site. Tr. 41 and 44. Technical Staff agreed, stating that “The proposed use of the Property for offices is supported by the existing infrastructure and public facilities.” Exhibit 28(a), p. 11.

Based on this record, the District Council finds that the proposed use will be served by adequate public services and facilities.

Environmental Impacts

Under the 2014 Zoning Ordinance, an Applicant for rezoning is not required to submit an approved Natural Resource Inventory / Forest Stand Delineation (NRI/FSD) with its rezoning application; however, as required by the Zoning Ordinance, Applicant filed an “Existing Conditions Plan” (Exhibit 21(b)), certified by a professional and showing the existing conditions on the site and in the vicinity within 100 feet. As demonstrated by this plan, and accepted by Technical Staff (Exhibit 28(a), p. 10), “There are no forests, wetlands, or other environmental features on the Property.” Staff added (Exhibit 28(a), p. 13), “The Property does not contain any stream, floodplain, wetland, environmental buffers, or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.” The Plan also indicates that the site is not in a Special Protection or Primary Management area, and has no rare, threatened, or endangered species.

As mentioned above, Applicant’s civil engineer testified that, given the limited land disturbance, there is no requirement to upgrade stormwater management on the site. Tr. 41 and 44. Technical Staff did not find it necessary to address stormwater management in its report, but did note that the environment would be protected in that “The Applicant plans to add six native shade trees and five native ornamental trees along the west and east sides of the Property to enhance the tree canopy and improve the landscape buffers.” Exhibit 28(a), p. 11.

Based on this record, the District Council is satisfied that the proposed use raises no new environmental concerns, and any impacts will be further evaluated at site plan review.

Necessary Findings

Zoning involves two basic types of classifications, Euclidean Zones and Floating Zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365

⁶ The identical language can be found on page 14 of the 2016-2020 Subdivision Staging Policy.

(1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development, such as permitted uses, lot sizes, setbacks, and building height.

A Floating Zone is a more flexible device that allows a legislative body to establish types of zoning districts for specified uses, without attaching those districts to particular pieces of property unless and until a local map amendment application is approved. Applications for a Floating Zone can be filed by individual land owners, and approving an application for a Floating Zone attaches that zone and its regulations to that land owner's individual piece of property, without applying that Floating Zone to a larger zoning district. To approve such a rezoning, the Council must find that the proposal will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the 2012 Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i)).⁷

Montgomery County has many Floating Zones, including the Employment Office Floating (EOFF) Zones. The specific zone sought in this case is the EOFF-0.5, H-35 Zone, which would allow a Floor Area Ratio (FAR) of up to 0.5 and a height of up to 35 feet. Other development standards must be met, but generally the details of site-specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening are addressed by the Planning Board, after rezoning, at site plan review, per §§59.7.1.3, 59.7.2.1.G.2 and 59.7.3.4 of the Zoning Ordinance. The Council has a broader discretionary role in determining whether to approve a rezoning; however, the 2014 Zoning Ordinance still requires a structured and detailed analysis for the Council's review of rezoning applications. Zoning Ordinance §59.7.2.1.E. establishes a set of "Necessary Findings" the Council must make for any Floating Zone application:

E. Necessary Findings

- 1. A Floating zone application that satisfies Article 59-5 may not be sufficient to require approval of the application.*
- 2. For a Floating zone application the District Council must find that the floating zone plan will:*
 - a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*
 - b. further the public interest;*
 - c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;*
 - d. be compatible with existing and approved adjacent development;*
 - e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and*

⁷ Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new "Land Use Article." Section §21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

As is apparent, Finding 2.c. of these “Necessary Findings” incorporates requirements spelled out elsewhere in the Code—specifically under sections that establish “the intent and standards” of the Zone. Those general standards are found in Zoning Ordinance Sections 59.5.1.2., 5.1.3. and 5.1.4. Specific standards for Employment Office Floating Zones are spelled out in Sections 59.5.4.1., 5.4.2., 5.4.3., 5.4.4. and 5.4.5. We will first address the general “Necessary Findings” set forth above, and will then review the specific standards which must be met to rezone to an EOFF-0.5, H-35 Zone.

When the reclassification sought by an applicant is recommended by the Planning Board, approval of the rezoning by the Council requires an affirmative vote of 5 Council members; however, when the Planning Board does not recommend the reclassification sought (or if approval would be contrary to the recommendation of the municipality in which the property is located), the Zoning Ordinance requires an affirmative vote of 6 members of the Council for approval. Zoning Ordinance §59.7.2.1.F.2. The Planning Board did recommend approval of the rezoning in this case, and no municipality has made a recommendation, so a simple majority of 5 members of the Council is required for approval.

Zoning Ordinance §59.7.2.1.E.2.

For a Floating zone application the District Council must find that the floating zone plan will:

a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

The subject site is located in the area covered by the *1992 North Bethesda/Garrett Park Master Plan*. For the reasons set forth above, and in Part III.F. of the Hearing Examiner’s report, the District Council finds that the proposed Floating Zone Plan will substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans.

b. further the public interest;

As stated by Technical Staff (Exhibit 28(a), p. 10):

Approval of this Local Map Amendment furthers the public interest by prolonging the viability of an existing development that is already well integrated into the community, and keep[ing] it economically viable now and into the future. The utility and function of the building will be preserved with minimal costs and without the impacts associated with new construction.

The District Council agrees. There is no downside to the community in the subject proposal. If some of the office space currently used for medical offices is rented out as general office space, the evidence demonstrates that it will reduce the amount of traffic burdening the local

roads. Tr. 55-63; Exhibit 28(a), p. 9. Moreover, the community will be protected by the Binding Elements from general office use that would bring commercial vehicles to the site and will be protected from cut-through traffic onto Bells Mill Road. Based on this undisputed evidence, the District Council finds that the proposed development will further the public interest.

c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;

For the reasons set forth in Parts V.B., V.C., V.D. and V.E. of the Hearing Examiner's report, as summarized below, the District Council finds that the proposed Floating Zone Plan will satisfy the intent and standards of the proposed zone, and to the extent necessary to ensure compatibility, it will meet the other applicable requirements of the Zoning Ordinance.

d. be compatible with existing and approved adjacent development;

Technical Staff addressed the issue of compatibility (Exhibit 28(a), pp. 12, 15-16):

The compatibility of the existing development with the surrounding neighborhood was established by the special exception approval process and the Property has maintained that compatibility during the medical clinic's thirty plus years of operation on the Property. The height, density, and setbacks of the established building will remain the same under the proposed Floating Zone, so the building's existing relationship with the neighborhood will remain the same. Supplemental landscaping will be added to enhance compatibility, and negative impacts to the neighborhood will be minimized by restrictions on the types of office users allowed to rent space in the building.

* * *

The compatibility of the existing buildings and site design with the adjacent development was established by the approval of the original special exception. No change is proposed to the existing buildings. Landscape improvements will enhance compatibility with the surrounding neighborhood. The replacement of medical offices with other types of offices will have negligible, if any, impact on the adjacent residential community. Further, traffic to and from the site will be reduced to the extent that non-medical offices replace medical offices.

In addition to these observations by Staff, the Hearing Examiner noted that the design of the existing building, which has the appearance of townhouses, is consistent with the residential appearance of much of the surrounding neighborhood. It will remain unchanged by this proposal. Based on this undisputed evidence, the District Council finds that the proposed development will be compatible with existing and approved adjacent development.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and

For the reasons set forth above, and in Part III.G. of the Hearing Examiner's report, the District Council finds that the proposed development will not generate traffic that exceeds the critical lane volume or volume/capacity ratio standard, as applicable under the Planning Board's LATR Guidelines.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

This provision is largely addressed by the preceding comments regarding compatibility. Technical Staff added (Exhibit 28(a), p. 16):

The Applicant is requesting to apply a non-Residential Floating Zone (EOFF) to a property classified as R-60, a Residential Detached Zone. However, the Property is already used for medical offices through a special exception approval. The conversion of medical to non-medical offices will not adversely affect the character of the Property or the surrounding neighborhood. The residential style architecture of the existing buildings will be retained as will the buffers between the use and the surrounding residential properties, ensuring that character will remain intact. Further, supplemental landscaping will be added to enhance the buffer between this Property and the adjacent townhouse community.

The District Council agrees with these observations, and finds that the proposed use will not adversely affect the character of the surrounding neighborhood, which includes single-family townhouses, single-family detached homes, a library, a school and a shopping center.

The Intent and Standards of the Zone as set forth in Section 59.5.1.2.

The next step in the review process is a determination of whether the proposed development will satisfy the intent and standards of the EOFF-0.5, H-35 Floating Zone. These standards are set forth in **Zoning Ordinance §59.5.1.2:**

The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). To obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment under Section [7.2.1](#). The intent of the Floating zones is to:

- A. Implement comprehensive planning objectives by:

 - 1. furthering the goals of the general plan, applicable master plan, and functional master plans;*
 - 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and**

3. *allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and*
- B. *Encourage the appropriate use of land by:*
 1. *providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
 2. *allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
 3. *ensuring that development satisfies basic sustainability requirements including:*
 - a. *locational criteria,*
 - b. *connections to circulation networks,*
 - c. *density and use limitations,*
 - d. *open space standards,*
 - e. *environmental protection and mitigation; and*
- C. *Ensure protection of established neighborhoods by:*
 1. *establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
 2. *providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
 3. *allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

Section 59.5.1.2.A - Encourage the appropriate use of land . . .

The first test listed under this section essentially asks whether the proposal will comport with the goals of the general plan and the applicable master plan. The standard set forth in §59.5.1.2.A.1. is, of course, repetitive of the previously discussed Master Plan standards, and for the reasons set forth above, the District Council finds that the proposed Floating Zone Plan will further the goals of the general plan, master plan, and functional master plan.

Sections 59.5.1.2.A.2 and A.3, address the adequacy of public facilities and the design flexibility of the planned development. For the reasons set forth above, and in Part III.G. of the Hearing Examiner's report, it is clear that the proposed use is supported by existing infrastructure, and the essence of this application is to allow greater flexibility in the use. As observed by Technical Staff (Exhibit 28(a), p. 11), "The existing office park is well integrated into the existing circulation network and land use pattern." Based on this record, the District Council finds that the proposed development will satisfy the intent standards for the EOFF-0.5, H-35 Zone, as set forth in §59.5.1.2.A.

Section 59.5.1.2.B - Implement comprehensive planning objectives . . .

The second portion of the intent provision (Section §59.5.1.2.B.) asks whether the proposal will encourage an appropriate, flexible and sustainable use of the land that will serve the

community even in changing circumstances. Technical Staff found that the proposal would encourage an appropriate use of the land, stating (Exhibit 28(a), p. 11):

This Application responds to current trends in the medical industry that compel medical practitioners to join larger practices or emergency clinics instead of establishing individual practices. This trend has led to vacancies in smaller medical office spaces such as those in the Georgetown Professional Medical Clinic. Permitting other types of users to occupy this office space allows the existing development to evolve with the changing demand for office space.

The Property has an existing, attractive open space that satisfies all the requirements for amenity open space under Section 6.3.7. The Applicant plans to add six native shade trees and five native ornamental trees along the west and east sides of the Property to enhance the tree canopy and improve the landscape buffers

Based on this undisputed evidence, the District Council finds that the proposed development will satisfy the intent standards for the EOFF-0.5, H-35 Zone, as set forth in §59.5.1.2.B., and will encourage the appropriate and flexible use of the land.

Section 59.5.1.2.C - Ensure protection of established neighborhoods . . .

The third prong of the intent provision (Section §59.5.1.2.C.) seeks to ensure protection of established neighborhoods by requiring design flexibility and compatibility with existing developments. Once again, the requirements of this section are repetitive of the general compatibility findings required by Section 59.7.2.1.E.2.d. As previously mentioned, the proposed development will be compatible with the surrounding area, in that it would continue to operate in the same residential-appearing building that has existed on the site for decades, and would even add more landscaping. As stated by Technical Staff (Exhibit 28(a), p. 12):

The compatibility of the existing development with the surrounding neighborhood was established by the special exception approval process and the Property has maintained that compatibility during the medical clinic's thirty plus years of operation on the Property. The height, density, and setbacks of the established building will remain the same under the proposed Floating Zone, so the building's existing relationship with the neighborhood will remain the same. Supplemental landscaping will be added to enhance compatibility, and negative impacts to the neighborhood will be minimized by restrictions on the types of office users allowed to rent space in the building.

As was stated with regard to the compatibility findings required in §59.7.2.1.E.2.d, above, the District Council finds that the proposed development will be compatible with existing and approved adjacent development. The standards set forth in §59.5.1.2.C. have been satisfied.

The Applicability of the Zone as set forth in Section 59.5.1.3.

Section 59.5.1.3. of the new Zoning Ordinance sets up a series of tests to determine whether the requested Floating Zone may be applied to the site in question. Each subsection is listed separately below, followed by the District Council's finding on each:

Section 59.5.1.3. A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.

Subsection "A" is not applicable since the subject site is in a Residential zone, not in either an Agricultural or a Rural Residential zone.

Section 59.5.1.3. B. If a Floating zone is recommended in a master plan, there are no prerequisites for an application. For properties with a master plan recommendation for a Floating zone for which an application can no longer be made as of October 30, 2014, the following table identifies the equivalent Floating zones for which an applicant may apply:

* * *

Subsection "B" is not applicable since the *1992 North Bethesda/Garrett Park Master Plan* neither recommends nor opposes a Floating Zone on the subject site. It is silent on the issue.

Section 59.5.1.3. C. If a Floating zone is not recommended in a master plan, the following apply:

- 1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division 5.2 through Division 5.5. Any density bonus requested under Chapter 25A may be added to the density allowed under Division 5.2 through Division 5.5 and included in the units per acre or FAR of the zone requested.***

Subsection "C" is applicable since the *1992 North Bethesda/Garrett Park Master Plan* does not expressly recommend a Floating Zone on the subject site. Subsection "C.1." requires the maximum density to be calculated in accordance with Section 59.5.4.5, which is done on pages 25-26 of this Opinion. As is shown there, the proposed use will be within the maximum density allowed. No density bonus has been requested in this case.

2. Residential Base Zone

* * *

- c. When requesting a Commercial Residential Floating (CRF) zone, Commercial Residential Town Floating (CRTF) zone, or any Employment Floating zone (NRF, GRF, EOFF, LSCF) for a property with a Residential base zone:***

- i. The property must front on a nonresidential street or must confront or abut a property that is in a Commercial/Residential, Employment, or Industrial zone; and*
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.*

Subsection “C.2.” is applicable since the site is in a Residential Base Zone (R-60). The application satisfies Subsection C.2.c.i. because it fronts on Democracy Boulevard, a nonresidential street. As stated by Technical Staff (Exhibit 28(a), p. 12): “This segment of Democracy Boulevard is classified as a major highway, so the Property fronts on a nonresidential street.” The application satisfies Subsection C.2.c.ii. because, as determined by Technical Staff (Exhibit 28(a), p. 12), “[it] satisfies at least two prerequisites for each of the required categories under Section 5.1.3.D. . . .” Actually, the application satisfies seven of the listed prerequisites.

3. Non-Residential Base Zone

When requesting a Floating zone for a property with a non-Residential base zone there are no prerequisites for an application.

* * *

Subsection “C.3” is not applicable since the site is in a Residential Base Zone.

Section 59.5.1.3.D. Prerequisites

Technical Staff lists the Section 59.5.1.3.D. Prerequisites that are satisfied by this application (Exhibit 28(a), pp. 12-13):

- Transit and Infrastructure

- 1. At least 75% of the site is within ¼ mile of a Level 3, ½ mile of a Level 2, or ¾ mile of a Level 1 transit station/stop.*

The Property is within ¼ mile of the Master Planned bus rapid transit (BRT) station at Democracy Boulevard and Rockledge Drive, which is a level two station.

- 2. The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development.*

The Property is served by existing water and sewer infrastructure, and the proposed zoning change will not put additional pressure on the infrastructure.

- 3. All signalized intersections within ¼ mile of the site boundary are operating below the applicable congestion standard.*

Two signalized intersections are located within ¼ mile of the Property, Democracy Boulevard and Old Georgetown Road (MD187), and Rockledge Drive and Old Georgetown Road. Both intersections operate within the congestion standard of 1,550 for the North Bethesda Policy Area.

- Vicinity and Facilities

1. *The site is adjacent to a route that provides access to an existing or master-planned school within ½ mile.*

Walter Johnson High School is located directly across the street from the Property on Democracy Boulevard.

2. *The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within ¼ mile.*

Giant Food is located in the Wildwood Shopping Center, within ¼ mile of the Property.

- Environment and Resources

1. *The limits of disturbance for the development will not overlap any stream, floodplain, wetland, or environmental buffer or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.*

The Property does not contain any stream, floodplain, wetland, environmental buffers, or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.

2. *The site does not contain any forest or, if forest is present, the limits of disturbance for the development will not reduce the forest cover to less than an area of 10,000 square feet and width of 35 feet at any point.*

The Property does not contain any forest.

Based on this undisputed record, the District Council finds that the subject Floating Zone application meets all the tests set forth in Section 59.5.1.3 for applying the requested EOFF-0.5, H-35 Zone to the site in question. Section 59.5.1.4 notes that an application for a Floating Zone must be approved as a Local Map Amendment under Section 59.7.2.1. As discussed above, the application does meet the requirements set forth under Section 59.7.2.1. Section 59.5.1.5 is inapplicable to the zone sought in this case.

The Employment Office Floating Zones, their Purpose and Uses, as set forth in Division 5.4

Zoning Ordinance Division 59.4 lists the Employment Office Floating Zones, specifies their purpose, designates the allowed uses and building types and sets forth the applicable development standards.

Division 5.4. Employment Floating Zones

Section 5.4.1. Zones

- A. *There are 4 categories of Employment Floating zones.*
- B. *Employment Floating zones are mapped using the zone's initials followed by the maximum allowed total density and maximum allowed height as limited by Division 5.4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet.*
 - 1. *General Retail – Floating* (GRF# H#)
 - 2. *Neighborhood Retail – Floating* (NRF# H#)
 - 3. ***Employment Office – Floating*** (EOFF# H#)
 - 4. *Life Sciences Center – Floating* (LSCF# H#)

The Zone sought in this case the EOFF-0.5, H-35 Employment Office Floating Zone.

Section 5.4.2. Purpose

The purpose of the Employment Floating zones is to:

- A. *allow development of commercial centers and communities, at a range of densities and heights flexible enough to respond to various settings.*
- B. *allow limited residential development and flexibility in uses for a site; and*
- C. *provide development that is compatible with adjacent development.*

Technical Staff found that the proposed rezoning would satisfy the purpose of the Employment Office Floating Zone because (Exhibit 28(a), p. 13):

The proposed EOFF Zone would allow flexibility in the types of office users allowed, helping to ensure the viability of the existing office park that is already well integrated into the community and compatible with the adjacent development.

Staff's finding is undisputed in the record, and the District Council finds that the proposed rezoning would satisfy the purpose of the Employment Office Floating Zone for the reasons stated by Staff and adopted by the Hearing Examiner.

Section 5.4.3. Land Uses

- A. *The following land uses are allowed in the Employment Floating zones:*
 - 1. *In the GRF zones, only the uses allowed in the GR zone are allowed.*
 - 2. *In the NRF zones, only the uses allowed in the NR zone are allowed.*
 - 3. *In the EOFF zones, only the uses allowed in the EOF zone are allowed.*

- 4. In the LSCF zones, only the uses allowed in the LSC zone are allowed.*
- B. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses to support the necessary findings of approval under Section 7.2.1.*

The only land uses proposed for this site are a medical clinic and general office uses. Both of those uses are permitted in the EOF Euclidean Zone per Zoning Ordinance §59.3.1.6. By the terms of the above-quoted Section 59.5.4.3.A.3., the proposed uses are therefore permitted in the EOF Floating Zones, as confirmed by Technical Staff. Exhibit 28(a), p. 14. As permitted by Section 59.5.4.3.B., quoted above, the Applicant has voluntarily agreed to binding elements restricting the nature of the office use and prohibiting vehicular access to Bells Mill Road, both of which will improve compatibility of the use. The District Council finds, as did Technical Staff and the Hearing Examiner, that the proposed Floating Zone Plan, with its binding elements, meets the land use requirements of this provision.

Section 5.4.4. Building Types Allowed

- A. Any building type is allowed in the Employment Floating zones.*
- B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.*

Since Section 59.5.4.4.A. permits any building type, the District Council finds, as did the Hearing Examiner, that the existing building, which will be retained, is compliant with this provision.

Development Standards for the Zone as set forth in Section 59.5.4.5.

Development Standards for the EOF-0.5, H-35 Zone are spelled out in Zoning Ordinance §59.5.4.5., which is set forth below:

Section 5.4.5. Development Standards

A. Density

- 1. If a Floating zone is recommended in a master plan, density must not exceed that recommendation.*

Since the EOF-0.5, H-35 Floating Zone is not specifically recommended in the Master Plan for this site, Section 59.5.4.5.A.1., is not applicable.

- 2. If a Floating zone is not recommended in a master plan, the following density limits apply:*

Density Allowed			
Pre-Existing Zone	Euclidean	Maximum Total Density Allowed in FAR Based on Size of Tract in Acres	
		Less than 0.5 acres	0.5 acres - 3.00 acres Greater than 3 acres
RE-2, RE-2c, RE-1, R-200		0.75 FAR	1.0 FAR 1.25 FAR
R-90, R-60 , R-40, TLD, TMD, THD		1.0	1.25 1.5
*		*	*

3. An applicant may limit density below the maximum allowed by Section 5.4.5.A to support the necessary findings of approval under Section 7.2.1.

As noted by Technical Staff (Exhibit 28(a), p. 12),

If a Floating Zone is not recommended in a master plan, as is the case with this Application, the maximum allowed density for an Employment Floating Zone is based on the existing zone and on the size of the tract as stated in Section 5.4.5. The table in Section 5.4.5 indicates that the maximum allowed density for an Employment Floating Zone on a 1.04-acre property currently zoned R-60 is 1.25 FAR. The Applicant requests a maximum density of 0.5 FAR.

The Hearing Examiner confirmed the accuracy of Staff's assertion by reference to the above-displayed table from Section 59.5.4.5.A.2. As demonstrated therein, the maximum density allowed for this site would be an FAR of 1.25, and the Applicant's Floating Zone Plan (FZP) has restricted the allowed density to an FAR of 0.5, as an applicant may do pursuant to Section 59.5.4.5.A.3., quoted above. The actual density on the site is even lower, at an FAR of 0.28. Exhibit 23(a). The District Council therefore finds that the Applicant has met the required density standards.

B. Setback and Height

- 1. If a Floating zone is recommended in a master plan, height must not exceed that recommendation.*
- 2. Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.*
- 3. Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.*

Since the Floating Zone is not expressly recommended in the Master Plan, Subsection 59.5.4.5.B.1. is not applicable. Applying Subsections 59.5.4.5.B.2. and 3., setbacks from the site boundary and maximum height are established by the Floating Zone Plan. All other setbacks are established by the site plan approval process under Section 7.3.4. Also, height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B. The FZP in this case (Exhibit 23(a)), establishes the applicable setbacks and sets the height at 35 feet. As noted by Technical Staff (Exhibit 28(a), p. 15, note 1), “The height satisfies the compatibility standards under Section 4.1.8.B. [because the] maximum height of the proposed zone (35’) is the same as the maximum height for a detached house in the R-60 Zone.” The Hearing Examiner agreed, and found that the proposed maximum height of 35 feet is compatible with the surrounding neighborhood. The District Council therefore finds that the Applicant has met the required setback and height standards.

The applicable development standards for Lot Size, Density, Setbacks and Height, as well as the Applicant’s compliance therewith, are set forth by Technical Staff in the top half of the Table on page 15 of their report (Exhibit 28(a), p. 15):

Section 5.4.5. Development Standards [Top Half of Table]

	Required / Allowed	Proposed/ Existing
Lot Size	n/a	1.04 acres
Density	0.5 FAR	0.28 FAR
Setbacks		
Front (Democracy Blvd.)	Established by floating zone plan	40’
Side		70’
Rear (Bells Mill Rd.)		40’
Height		35’ ¹
*	*	*

¹ The height satisfies the compatibility standards under Section 4.1.8.B. The maximum height of the proposed zone (35’) is the same as the maximum height for a detached house in the R-60 Zone.

C. Lot Size

Minimum lot sizes are established by the site plan approval process under Section 7.3.4.

There is no plan to change the existing lot size in this case, but any concerns in this regard would normally be addressed at Site Plan Review, as required by this section.

D. General Requirements

- 1. Parking, recreation facilities, screening, and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.4.3.*
- 2. Open Space*

- a. *If public benefits are not required under Section 5.4.4.E, open space must be provided under Section 4.6.3 (for standard method) as required for the Euclidean zone that establishes uses under Section 5.4.3.*
- b. *If public benefits are required under Section 5.4.4.E, open space must be provided under Section 4.6.4.B.1 (for optional method) as required for the Euclidean zone that establishes uses under Section 5.4.3.*
3. *The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to allow the District Council to make the necessary findings of approval under Section 7.2.1.*

The applicable development standards for Amenity Open Space, Parking, Parking Lot Landscaping, Screening and Public Benefits, as well as the Applicant's compliance therewith, are set forth by Technical Staff in the bottom half of the Table on page 15 of their report (Exhibit 28(a), p. 15):

Section 5.4.5. Development Standards [Bottom Half of Table]

	Required / Allowed		Proposed/ Existing
*	*		*
Amenity Open Space	10% or 4,522 SF		10.9% or 4,949 SF
Parking (Medical/ Dental Clinics)			
Vehicle spaces (Section 6.2.4.B)	Min	Max	57 ²
	13	52	
Bicycle spaces (Section 6.2.4.C)	3 (85% long term)		3 long-term, 8 short-term ³
Parking lot landscaping (Section 6.2.9)			
Tree canopy	25% or 5,723 SF		29.5% or 6,745 SF
Landscaped area	5% or 1,145 SF		5.44% or 1,245 SF
Perimeter planting (required on northern and eastern side of parking lot)	10'		25' (north) 9' (east) ⁴
Screening (Division 6.5)	Not required per Section 6.5.3.A.4		n/a
Public Benefits	Not required		n/a ⁵

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² Per Section 6.2.3.H.2.b, the Applicant indicates that all parking spaces in excess of the maximum will not be reserved and will be made available to the public.

³ The Floating Zone Plan indicates that long term spaces will be provided in an existing storage room inside the building. The 8 existing short-term bicycle parking spaces do not meet the design requirements under Section 6.2.6.B.

⁴ The existing perimeter planting area is only nine feet wide and the Applicant will need to request a parking waiver under Section 6.2.1. at the time of site plan review.

⁵ The Application included public benefits based on the existing development, but public benefits are not required because the development is less than 1 FAR.

As indicated in the FZP (Exhibit 23(a)), and in the above Table, the Applicant plans to provide 57 vehicle parking spaces. Zoning Ordinance §59.6.2.4.B. specifies both a minimum and a maximum number of parking spaces for medical clinics in the EOFF Zones, based on gross floor area (GFA). The minimum is 1 space per 1,000 square feet of GFA, and the maximum is 4 spaces per 1,000 square feet of GFA. Since there are 12,855 square feet of GFA in the building, the limits in the Zoning Ordinance translate, as indicated in Staff's Table above, to a minimum of 13 parking spaces and a maximum of 52 parking spaces. Although the proposal for 57 spaces exceeds that maximum, that is permissible under Zoning Ordinance §59.6.2.3.H.2.b. where, as here, the excess spaces will be available to the public. Therefore, the District Council finds that the application is compliant with the Zoning Ordinance standards for the number of vehicular parking spaces.

Zoning Ordinance §59.6.2.4.C. requires that, in addition to vehicular parking spaces, the Applicant must provide bicycle spaces. For medical clinics in the EOFF Zones, that means at least one bicycle space for every 5,000 square feet of GFA (85% of which must be long term), which yields a requirement for at least 3 bicycle spaces, all of which must be long term. As indicated in the FZP (Exhibit 23(a)), and in Technical Staff's Table, above, the Applicant will provide the required 3 long term spaces in an existing storage room, and 8 short-term spaces. Based on this record, the District Council finds that the application is compliant with the Zoning Ordinance standards for the number of bicycle parking spaces.

Technical Staff's Table also describes the parking lot's tree canopy, landscaping and screening, as called for in Zoning Ordinance §§59.6.2.9 and 59.6.5.3.A.4. Staff notes (footnote 4 to its Table) that the perimeter planting is compliant with the Zoning Ordinance, except on the eastern side where it is 9 feet wide, which is one foot less than the 10-foot width required. Although Staff indicates that a waiver of that provision will be needed at Site Plan, the Hearing Examiner concluded that no such waiver is needed at the rezoning stage because the Hearing Examiner found that the proposed nine-foot wide planting area on the east side of the lot is compliant with the applicable screening provision "to the extent . . . necessary to ensure compatibility," which is the rezoning standard under Zoning Ordinance §59.7.2.1.E.2.c. The District Council agrees and finds that the application is compliant with the Zoning Ordinance standards for the parking lot's tree canopy, landscaping and screening.

Finally, the required amount of amenity open space must be determined. Under Zoning Ordinance §59.5.4.5.D.2, the amount of open space required depends on whether Zoning Ordinance §59.5.4.5.E. mandates the provision of public benefits in this case. Technical Staff concluded that ". . . public benefits are not required because the development is less than 1 FAR." Exhibit 28(a), p. 15, footnote 5 to the Table. This conclusion is based on the ambiguous language of Zoning Ordinance §59.5.4.5.E.1.a., which provides, "*Development above the greater of 1.0 FAR or 10,000 square feet of gross floor area in the EOFF zone requires public benefits.*" Even though the GFA of the building in this case exceeds 10,000 square feet, Staff concluded that this provision does not require a showing of public benefits because the FAR of the development is under the threshold of 1.0. While the Hearing Examiner recognized that this provision could easily be interpreted as requiring a showing of public benefits when *either* the FAR criterion *or* the GFA criterion is exceeded, he accepted Technical Staff's interpretation of the Planning Department's own regulations, since an agency's interpretation of its controlling regulations should be given considerable weight. As the Maryland Court of Appeals stated in *Watkins v. Secretary, Dept. of*

Public Safety and Correctional Services, 377 Md. 34, 46, 831 A.2d 1079, 1086 (2003), “We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers.” The District Council agrees with the Hearing Examiner’s reasoning and concludes that the Zoning Ordinance does not require the Applicant to demonstrate “public benefits” regarding open space under the circumstances of this case.

Since a showing of public benefits is not required, Zoning Ordinance §59.5.4.5.D.2. provides that “. . . *open space must be provided under Section 4.6.3 (for standard method) as required for the Euclidean zone that establishes uses under Section 5.4.3.*” Turning to the referenced Section 59.4.6.3., the following table sets the standards for open space in the EOF Zone, per Subsection 59.4.6.3.E.1.:

E. EOF Zone, Standard Method Development Standards

1. Site	Detached House	Duplex - Side	Duplex - Over	Townhouse	Apartment	Multi Use	General
Open Space (min)							
Open space, tract ≤ 10,000 SF	n/a	n/a	n/a	10%	0%	0%	0%
Open space, tract > 10,000 SF	n/a	n/a	n/a	10%	10%	10%	10%
Specifications for all Open Space							
a.	In a development with townhouse, apartment, multi use, or general building types, open space is calculated on the area of the site minus any area for detached house and duplex lots.						
b.	Open space for the townhouse building type is common open space (see Section 6.3.5), and for other building types is amenity open space (see Section 6.3.7).						

As is apparent from this Table, the amount of open space required is at least 10% of the area of the subject tract. Since the tract area is 45,220 square feet, the minimum required amount of open space required is 4,522 square feet. That requirement is met by the existing open space at the southern end of the site, adjacent to Bells Mill Road. That area measures 4,949 square feet (10.9% of the tract), according to the FZP (Exhibit 23(a)), as confirmed by Technical Staff in its Development Standards Table (Exhibit 28(a), p. 15). Thus, the District Council finds that the application satisfies the open space requirements for the EOF Zone.

Based on this undisputed record, the District Council finds that the subject Floating Zone application meets all the development standards set forth in Section 59.5.4.5. of the Zoning Ordinance.

Conclusion

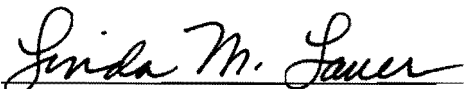
Based on the foregoing analysis and after a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012). More specifically, the evidence demonstrates compliance with Zoning Ordinance §59.7.2.1.E., which spells out the general requirements for approval of a rezoning to a Floating Zone, and with Sections 59.5.1.2., 59.5.1.3., 59.5.1.4., 59.5.4.1., 59.5.4.2., 59.5.4.3., 59.5.4.4. and 59.5.4.5, which together detail the intent, purposes, and standards of the proposed EOF-0.5, H-35 Employment Office Floating Zone.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, approves the following resolution:

Local Map Amendment Application No. H-118, requesting reclassification from the existing R-60 Zone to the EOFF-0.5, H-35 Employment Office Floating Zone, of Parcel A, Block T of the Georgetown Village Subdivision, as described in Plat 12576, located at 6300 Democracy Boulevard, in Bethesda, Maryland, and consisting of 1.04 acres of land (45,220 square feet), is hereby **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 23(a); provided that the Applicant files an executed covenant reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council